



No. \ of 1999.

Privatization Act 1999.

Certified on : 23 AUG 1999

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1999.

Privatization Act 1999.

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Interpretation –
 - “assets”
 - “Commission”
 - “company”
 - “eligible person”
 - “enterprise”
 - “Executive Chairman”
 - “liabilities”
 - “member”
 - “privatization policy”
 - “privatization”
 - “special project”
 - “successor company”
 - “this Act”.

PART II. - PRIVATIZATION COMMISSION.

2. Establishment of the Privatization Commission.
3. Incorporation of the Commission.
4. Objects of the Commission.
5. Functions of the Commission.
6. Members of the Commission.
7. Executive Chairman.
8. Staff, etc., of the Commission.
9. Vacancy not to affect powers or functions.
10. Meetings of the Commission.
11. Disclosure of interest.
12. Delegation.
13. Powers of the Commission.
14. Vesting of assets in the Commission.

PART III. - FINANCE, ETC.,

15. Subsidiary companies.
16. General Reserve Fund.
17. Dealing with profits.
18. Bank accounts.
19. Performance and Management plan.
20. Particulars of proposed expenditure.
21. Loans by the State.
22. Private treaty loans.
23. Borrowing by overdraft.
24. Investment.
25. Application of moneys.
26. Accounts, records, etc.,
27. Reports and financial statements.
28. Liability to taxation.

PART IV. - MISCELLANEOUS.

29. Formal transfer of land.
30. Payments guaranteed by the State.
31. Confidentiality.
32. Validity of acts and transactions.
33. Regulations.
34. Repeal.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1999.

AN ACT

entitled

Privatization Act 1999,

Being an Act to establish the Privatization Commission and to define its objects, functions and powers, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears -

“assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes shares and capital (uncalled or otherwise) in any company, securities, choses in action and documents of any kind;

“Commission” means the Privatization Commission established by Section 2 and any successor companies;

“company” means a body incorporated, registered or deemed to be registered under the *Companies Act 1997* and includes a body incorporated in any jurisdiction in any country under legislation in that jurisdiction and country with a purpose similar to the *Companies Act* and includes a body incorporated by legislation in any jurisdiction or country;

“eligible person” means a person defined as an eligible person in a privatization policy;

“enterprise” means the whole or any part of any business, undertaking or activity of -

(a) a statutory body established by Act; or

(b) a company wholly owned by the State; or

(c) the State; or

(d) a Department, or Office within a Department,

and without limiting the generality of the foregoing, includes the whole or any part of the assets or liabilities of any of the bodies referred to in Paragraphs (a) to (d) inclusive;

Privatization

- “Executive Chairman” means the Executive Chairman of the Commission appointed under Section 7;
- “liabilities” means liabilities, debts and obligations (whether present or future and whether vested or contingent);
- “member” means a member of the Commission;
- “privatization policy” means a policy approved by the Minister in respect of privatization generally or in respect of the privatization of a specific enterprise or specific enterprises;
- “privatization” means the process by which the control, management or ownership of an enterprise wholly or partially passes from the State to eligible persons and “privatize” and “privatized” have corresponding meanings;
- “special project” means a project certified by the Minister as a special project, and without limiting the generality of the foregoing includes a project and any matter arising therefrom during the assessment, deliberation, planning or implementation of which the Minister requires specialist advice or consultation and each and every activity advisory or otherwise, which does not fall within the definition of privatization;
- “successor company” means a company the shares of which are wholly owned by the Commission and in respect of the privatization of an enterprise means the successor company to which assets and liabilities of the enterprise have been vested under Section 14;
- “this Act” includes the Regulations.

PART II. - PRIVATIZATION COMMISSION.

2. ESTABLISHMENT OF THE PRIVATIZATION COMMISSION.

A body by the name of the Privatization Commission is hereby established.

3. INCORPORATION OF THE COMMISSION.

- (1) The Commission -
- (a) is a corporation with perpetual succession; and
 - (b) shall have a seal; and
 - (c) may acquire, hold and dispose of property; and
 - (d) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting in a judicial capacity shall take judicial notice of the seal of the Commission affixed to a document, and shall presume that it was duly affixed.

4. OBJECTS OF THE COMMISSION.

(1) The objects of the Commission are to ensure an effective and coordinated approach to privatization by recommending a privatization policy, and, where such privatization policy is approved, by ensuring that privatization is effected in accordance with the privatization policy.

Privatization

- (2) By virtue of the privatization -
- (a) the State will divest itself, as far as possible, of certain functions and assets and the proceeds thereof will be dealt with in accordance with Section 17; and
 - (b) the State will divest itself, as far as possible, of interest in the ownership, management and control of public enterprises and the provision of goods and services by State agencies.

(3) The Commission shall carry out the privatization, consistent with the privatization policy and with the purpose of fostering and developing an economic environment that allows free and fair play of market forces and encouraging competition and market efficiencies in the provision of goods and services.

5. FUNCTIONS OF THE COMMISSION.

- (1) The functions of the Commission are -
- (a) from time to time as required, to formulate and submit to the Minister for consideration by the National Executive Council a privatization policy in relation to privatization generally; and
 - (b) to formulate and submit to the Minister for consideration by the National Executive Council a privatization policy in respect of each specific enterprise under consideration for privatization; and
 - (c) to report to the Minister on any special project referred to it by the Minister; and
 - (d) to identify enterprises suitable for privatization and recommend them to the Minister; and
 - (e) to effect the corporatization and privatization of an enterprise as approved by the National Executive Council and directed by the Minister.

(2) In formulating a privatization policy under Subsection (1)(a) or (b) the Commission shall deal with such matters as are specified by the Minister.

6. MEMBERS OF THE COMMISSION.

- (1) The Commission shall consist of the following members:-
- (a) an Executive Chairman, who shall be appointed in accordance with Section 7;
 - (b) the Departmental Head of the Department of Treasury and Planning;
 - (c) the Governor of the Bank of Papua New Guinea;
 - (d) the Managing Director of the Investment Promotion Authority;
 - (e) the Departmental Head of the Department of Attorney-General;
 - (f) the President, Trade Union Congress;
 - (g) the Executive Director, Port Moresby Stock Exchange;
 - (h) the President, Papua New Guinea Chamber of Commerce and Industry;
 - (i) a person nominated by the Minister.

Privatization

(2) Any member may attend meetings by a nominee appointed in writing, such nominee being the next most senior person in the Department or organization represented by the member.

(3) Members or their nominees (except the Executive Chairman) shall be paid such allowances and fees as are determined by the Minister.

7. EXECUTIVE CHAIRMAN.

(1) The Executive Chairman shall be appointed by notice in the National Gazette by the Head of State, acting on advice.

(2) The Executive Chairman shall hold office for a term of five years which may be renewed by mutual agreement.

(3) The Executive Chairman shall hold office under the terms and conditions of employment fixed by the Parliament following consideration of a recommendation by the Salaries and Remuneration Commission.

(4) The terms and conditions of employment shall be contained in a written contract of employment which shall be executed by the Head of State, acting on advice, and by the Executive Chairman.

8. STAFF, ETC., OF THE COMMISSION.

(1) The Executive Chairman shall appoint such persons to be members of the staff of the Commission as are necessary for the purposes of this Act.

(2) Members of staff shall be appointed on such terms and conditions as are fixed by the Minister subject to the *Salaries and Conditions Monitoring Committee Act 1988*.

(3) The Commission or the Executive Chairman may appoint, as a consultant or consultants on any matter in relation to its functions, such person or persons as possess the appropriate expertise.

(4) Where the Executive Chairman appoints a consultant or consultants he shall report such appointment to the Commission at its next meeting.

(5) The terms and conditions of a consultant or consultants employed under Subsection (3) are as determined by the Commission or the Executive Chairman as the case may be, subject to approval by the Minister.

9. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of the Commission is not invalidated by reason only of a vacancy in the membership of the Board.

Privatization

10. MEETINGS OF THE COMMISSION.

(1) The Minister shall call the first meeting of the Commission at such time and place and in such manner as the Minister may think fit.

(2) The Commission may, subject to this Act, determine the procedure for the calling of meetings of the Commission and the conduct of business at such meetings.

(3) The Commission shall meet at such times and places as the Minister may direct or failing such direction as the Executive Chairman may direct.

(4) At a meeting of the Commission -

(a) five members shall constitute a quorum; and

(b) the Executive Chairman shall preside, and in the absence of the Executive Chairman, the members present shall elect one of the number to preside; and

(c) all questions shall be decided by a majority of the members present and voting; and

(d) the person presiding at a meeting has a deliberative vote and in the event of an equality of votes on a resolution, also has a casting vote.

11. DISCLOSURE OF INTEREST.

(1) A member who is directly or indirectly interested in a matter (other than in his capacity as a member) being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a duly constituted meeting of the Commission.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Commission and after such disclosure the member interested -

(a) shall not take part in any deliberation or decision of the Commission with respect to the matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

12. DELEGATION.

The Commission may, by written instrument, delegate to a person all or any of its powers and functions under this Act (except this power of delegation).

13. POWERS OF THE COMMISSION.

(1) The Commission has power to do in the country or elsewhere all things necessary or convenient to be done for or in connection with or otherwise incidental to the performance of its functions.

Privatization

- (2) Without limiting the generality of Subsection (1) but subject to this Act, the Commission shall have power to -
- (a) incorporate or otherwise acquire successor companies; and
 - (b) cause successor companies to accept from the State, or otherwise acquire, ownership of and responsibility for any enterprise to be privatized or otherwise dealt with in accordance with the policy; and
 - (c) undertake and cause to be carried out the privatization of an enterprise; and
 - (d) subscribe for or otherwise acquire shares in successor companies and deal with them in accordance with the privatization policy; and
 - (e) procure or cause to be allotted, issued, disposed of or otherwise dealt with as fully or partly paid shares in successor companies in accordance with the policy; and
 - (f) establish or manage or join in the establishment or management, in the country or elsewhere, of investment companies or unit trusts or other mutual funds; and
 - (g) take such action as appears to it necessary or desirable to sell or otherwise make available to eligible persons shares, units or sub-units in any such company, trust or fund; and
 - (h) enter directly or indirectly into incorporated or unincorporated joint ventures or other consortium arrangements; and
 - (i) receive and disburse monies advanced by the Minister or appropriated by Parliament for the purpose of performing its functions; and
 - (j) enter into arrangements for the formation, acquisition, sale, restructuring or liquidation of companies; and
 - (k) deal with shares, stock, units, debentures, options, warrants or other securities or financial instruments in relation to a company with the same power as that of an ordinary person; and
 - (l) carry on any business or undertaking wheresoever situate; and
 - (m) manage the affairs of any company, business or undertaking; and
 - (n) borrow money; and
 - (o) enter into any contract; and
 - (p) deal with land, any interest in land or any lease with the same power as that of an ordinary person; and
 - (q) provide guarantees; and
 - (r) appoint agents, nominees or representatives; and
 - (s) act as trustee; and
 - (t) do anything necessary or convenient for or incidental to the purpose of its functions or powers.

(3) The Commission may, and shall where the Minister so directs, act as agent for the State in relation to any matter within the functions of the Commission and the State hereby fully and effectively indemnifies it and holds it safe against all claims or actions of whatsoever nature or howsoever arising made or taken against it as a result of its acting as such agent.

Privatization

(4) An enterprise and every Board member and officer thereof, shall co-operate with and assist the Commission in the performance of its functions.

14. VESTING OF ASSETS IN THE COMMISSION.

(1) To assist in the privatization process the Commission shall have vested in it the assets of an enterprise.

(2) The Head of State, acting with, and in accordance with, the advice of the Minister may from time to time by notice in the National Gazette declare that an enterprise is to be a privatized enterprise for the purpose of this Act, and on and from the date specified in the said notice the assets, management, administration and control of the said enterprise shall vest in the Commission.

(3) Notwithstanding anything contained in this Act or any other Act, all assets referred to in Subsection (2) shall vest absolutely in the Commission and the legal and equitable title to the said assets shall not be affected by any lack of procedure or process.

(3) It is the intention of Subsection (2) to vest a clear title in the Commission so that any third party dealing with the Commission need not concern himself with any aspect of procedure or process.

(4) The Commission may by resolution declare that any assets vested in it pursuant to this section are vested in a specific successor company.

PART III. - FINANCE, ETC.,

15. SUBSIDIARY COMPANIES.

(1) For the purposes of this Part, a company (including a successor company) shall, subject to Subsection (3), be deemed to be a subsidiary of the Commission where the Commission -

- (a) controls the composition of the board of directors of the company; and
- (b) controls more than 50% of the voting power of the company; and
- (c) holds more than 50% of the issued share capital of the company (excluding any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

(2) For the purposes of Subsection (1), the composition of a company's board of directors shall be deemed to be controlled by the Commission, where the Commission, by the exercise of a power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision the Commission shall be deemed to

Privatization

have power to make such an appointment where -

- (a) a person cannot be appointed as a director without the exercise in his favour by the Commission of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a member of the controlling body of, or an officer or employee of, the company.

(3) In determining whether a company is a subsidiary of the Commission -

- (a) subject to Paragraphs (b) and (c), any shares held or power exercisable -
 - (i) by a person as a nominee for the Commission; and
 - (ii) by, or by a nominee for, a subsidiary of the Commission, shall be treated as held or exercisable by the Commission; and
- (b) any shares held or power exercisable by a person by virtue of the provisions of any debenture of the company, or of a trust deed for securing an issue of any such debenture shall be disregarded; and
- (c) any share held, or power exercisable by, or by a nominee for, the Commission or a subsidiary of it (otherwise than as mentioned in Paragraph (b)) shall be treated as not held or exercisable by the Commission where -
 - (i) the ordinary course of business of the Commission or its subsidiary, as the case may be, includes the lending of money; and
 - (ii) the shares held or the power is exercisable by way of security only for the purposes of a transaction entered into in the normal course of business.

(4) For the purposes of this Part, a company is deemed to be a subsidiary company where it is a subsidiary of a subsidiary company.

16. GENERAL RESERVE FUND.

(1) The Commission shall establish and maintain a general reserve fund, to be called the Privatization Commission General Reserve Fund, consisting of such sums as are placed to the credit of the Fund pursuant to Section 17(1)(a).

(2) There may be transferred from time to time from the Privatization Commission General Reserve Fund to the Commission as capital such sum as the Commission, with the approval of the Minister, may determine.

Privatization

17. DEALING WITH PROFITS.

(1) At the end of each financial year or at such other times as the Minister may from time to time direct, the net profit of the Commission, after audit by the Auditor-General, for that financial year or for the period directed by the Minister, after making provision for such contingencies and accounting provisions as the Commission, with the approval of the Minister, may determine, shall be dealt with as follows:-

- (a) such amount as the Minister, after consultation with the Commission, may determine shall be placed to the credit of the Privatization Commission General Reserve Fund; and
- (b) the balance (if any) shall be paid into and form part of the Consolidated Revenue Fund.

(2) No amount shall be paid into the Consolidated Revenue Fund under Subsection (1)(b) where, in the opinion of the Commission, the assets of the Commission are, or after the payment would be, less than the sum of its liabilities.

(3) A receipt, given by the Minister or by a person duly authorized by him for this purpose, for moneys paid into the Consolidated Revenue Fund, shall constitute sufficient evidence of such payment and a full discharge of the Commission's obligation to pay the same.

18. BANK ACCOUNTS.

(1) The Commission -

- (a) shall open and maintain accounts within the country with such bank or banks as the Commission may from time to time determine; and
- (b) may open and maintain accounts in other countries with such bank or banks as the Commission may from time to time determine.

(2) The Commission shall pay all moneys received by it into an account referred to in Subsection (1), as is considered appropriate by the Executive Chairman.

19. PERFORMANCE AND MANAGEMENT PLAN.

(1) The Executive Chairman shall, at such intervals as are required by the Departmental Head of the Department responsible for financial management, submit to the Departmental Head of the Department responsible for financial management, a performance and management plan in respect of the Commission, approved by the Commission and by the Minister.

(2) A performance and management plan under Subsection (1) shall be in such form, and shall contain such information as is specified by the Departmental Head of the Department responsible for financial management.

Privatization

20. PARTICULARS OF PROPOSED EXPENDITURE.

The Executive Chairman shall, not later than three months before the end of each fiscal year, submit to the Departmental Head of the Department responsible for financial management -

(a) estimates of the receipts and expenditure of the Commission and of each subsidiary company for the next financial year: and

(b) its proposed works programme (if any) for that financial year.

as approved by the Commission and the Minister and in such form as the Minister responsible for financial matters approves.

21. LOANS BY THE STATE.

(1) The National Executive Council may direct the Minister responsible for financial matters to offer loan moneys from the State to the Commission for the purposes of the Commission on such terms as are approved by the National Executive Council or between the Minister and the Minister responsible for financial matters.

(2) The Commission shall repay in accordance with the terms on which a loan under Subsection (1) is made, such portion of the loan as is repayable.

22. PRIVATE TREATY LOANS.

(1) The Commission may, with the consent of the Minister and of the Minister responsible for financial matters, borrow money for its purposes from a person on such terms as are agreed between the Commission and that person.

(2) The Commission shall repay a loan made under Subsection (1) in accordance with the terms on which it was made.

23. BORROWING BY OVERDRAFT.

The Commission may, with the consents of the Minister and of the Minister responsible for financial matters, borrow for its purposes by overdraft within such limits as the Minister approves.

24. INVESTMENT.

(1) In this section -

“approved bank” means a bank carrying on business in the country and approved for the purposes of this section by the Minister

responsible for financial matters by notice in the National Gazette;

“authorized short-term market” means the group of dealer companies that are authorized by the Central Bank to be approved dealers in short-term loans and towards which that Bank acts as a lender of last resort.

(2) Moneys of the Commission that are not immediately required may be invested -

(a) in any securities of, or guaranteed by, the State: or

(b) in any manner in which a trustee may, under any law, invest trust moneys in his hands: or

Privatization

- (c) on deposit with an approved bank: or
- (d) in the securities of an authorized short-term market: or
- (e) in any other manner approved by the Minister responsible for financial matters.

25. APPLICATION OF MONEYS.

The moneys of the Commission may be applied only in payment or discharge of expenses, obligations and liabilities of the Commission arising under this Act.

26. ACCOUNTS, RECORDS, ETC.,

(1) The Commission and each subsidiary company shall cause to be kept proper accounts of its transactions and affairs, and shall do all things to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over its assets, or assets in its custody and over the incurring of liabilities by it.

(2) The accounts and records required by Subsection (1) shall be kept in accordance with the accounting principles generally applied in commercial practice.

27. REPORTS AND FINANCIAL STATEMENTS.

(1) The Executive Chairman shall, before 30 June in each year, prepare and furnish to -

- (a) the Minister; and
- (b) the Minister responsible for financial matters.

a report on the operations of the Commission for the year ending 31 December preceding, together with financial statements in respect of that year.

(2) Financial statements under Subsection (1) shall be in accordance with principals generally applied in commercial practice.

(3) Before furnishing financial statements in accordance with Subsection (1), the Executive Chairman shall submit them to the Auditor-General who shall report to Parliament in accordance with Part II of the *Audit Act 1989*.

(4) The report of the Auditor-General shall be included in any reproduction of the report or financial statements for publication or other purpose.

(5) The first report and financial statements shall be for that part of the fiscal year commencing on the date of coming into operation of this Act until 31 December following.

Privatization

28. LIABILITY TO TAXATION.

(1) The Commission is not liable to pay taxes, duties, fees, charges, rates, excise or other impost of any kind charged or imposed under any legislation currently enacted or which may be enacted by Parliament or, subject to the law permitting, by a provincial legislature except for legislation enacted by the Parliament specifically to amend or repeal this section.

(2) A successor company, in relation to a transfer to it from the Commission of any assets or liabilities, is not liable to pay taxes, duties, fees, charges, rates, excise or other impost of any kind charged or imposed under any legislation currently enacted or which may be enacted by Parliament or, subject to the law permitting, by a provincial legislature except for legislation enacted by the Parliament specifically to amend or repeal this section.

PART IV. - MISCELLANEOUS.

29. FORMAL TRANSFER OF LAND.

Where any asset vested in the Commission pursuant to this Act is land registered under the *Land Registration Act* (Chapter 191), the Registrar of Titles shall, without formal transfer and without fee, on application by the Commission or the nominated successor company, enter or register the Commission or the nominated successor company in the register kept under that Act and, on entry and registration, grant to the Commission or nominated successor company a certificate of title, lease or other instrument evidencing title to the land within that Act.

30. PAYMENTS GUARANTEED BY THE STATE.

Where any guarantee or indemnity has been given by the State in respect of an enterprise and the assets of the said enterprise have been vested in or transferred to the Commission or its successor company, such guarantee or indemnity shall remain in full force and effect.

31. CONFIDENTIALITY.

Information relating to the affairs of the Commission shall not be disclosed to any person without the prior written permission of the Minister except -

- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
- (b) to the extent that the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary for the Minister to give advice to the National Executive Council or Central Bank on a confidential basis.

32. VALIDITY OF ACTS AND TRANSACTIONS.

The validity of any act or transaction of the Commission or an enterprise shall not be called in question in any legal proceedings on the ground that any provision of this Act has not been complied with.

Privatization

33. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of business by the Commission.

34. REPEAL.

The following Acts are repealed:-

- (a) ***Papua New Guinea Holdings Corporation Act 1992;***
- (b) ***Papua New Guinea Holdings Corporation (Budget Provisions) Act 1994.***

I hereby certify that the above is a fair print of the ***Privatization Act 1999*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Privatization Act 1999*** was made by the National Parliament on 11 August 1999.

Speaker of the National Parliament.